

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

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In the Matter of:

Court File No. 10-PR-16-46

Estate of Prince Rogers Nelson,  
  
Decedent.

**ORDER & MEMORANDUM DENYING  
REQUEST FOR RECUSAL**

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The above-entitled matter came on before the undersigned on September 21, 2018 pursuant to CAK Entertainment, Inc.'s ("CAK") formal motion seeking this Court's recusal from considering a motion filed by the Second Special Administrator ("SSA") seeking a refund of alleged "excessive compensation" relating to two transactions involving Jobu Presents and Universal Music Group ("UMG"). The same matter was previously brought before the Court informally through letter briefs. On August 31, 2018, the Court issued an Order Denying Request for Recusal. This formal motion followed.

The SSA's motion is scheduled to be heard on October 2, 2018. In order to address the recusal motion before the upcoming hearing, the Court directed the parties to submit any memoranda on the recusal motion by September 21, 2018, after which the Court would rule on the motion via those written submissions alone. In response to the Court's direction, the Court received and has reviewed the Memorandum of Law of the Second Special Administrator in Opposition to the Motion of CAK Entertainment, Inc. for Recusal and CAK's Memorandum of Law in Support of Motion for Disqualification and the Affidavit of Erin Lisle.

Now, based on the submissions of the parties, the arguments of counsel and all of the files, records and proceedings herein, the Court makes the following:

**ORDER**

1. CAK Entertainment, Inc.'s motion seeking this Court's recusal from considering a motion filed by the Second Special Administrator ("SSA") seeking a refund of alleged

“excessive compensation” relating to two transactions involving Jobu Presents and Universal Music Group is respectfully DENIED.

2. The attached memorandum is incorporated herein and includes the Court’s findings of fact and conclusions of law.
3. Should any party wish to have this decision reviewed by the Chief Judge of the First Judicial District as provided for in Rule 106 of the General Rules of Practice for the District Courts, they shall address their concerns to Chief Judge Kathryn Messerich.

BY THE COURT:

Dated: September 26, 2018

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Kevin W. Eide  
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

## MEMORANDUM

At various times during the summer and fall of 2016 or winter of 2017 and while the Estate of Prince Rogers Nelson was under the special administration of Bremer Trust, the Court authorized the Estate to enter into agreements with Jobu Presents and with Universal Music Group (“UMG”). Upon the execution of those agreements, Jobu and UMG paid substantial sums to the Estate from which the entertainment advisors to the Estate received a 10% commission. For reasons addressed in prior decisions by this Court, the agreements with Jobu and UMG were terminated or rescinded and the sums paid by Jobu and UMG were repaid to them by the Estate, including the sums paid to the advisors as commissions. The commissions were not returned by the advisors, resulting in a net loss to the Estate. The advisors did not voluntarily refund the commissions to the Estate, nor did they offer an explanation for their retention which has been provided to this Court.

There exists between the current Personal Representative, Comerica Bank & Trust, and the Special Administrator, Bremer Trust, a Common Interest and Information Sharing Agreement, which prevents Comerica and Bremer, or their attorneys, from taking an adversarial position against each other. In other words, Comerica could not conduct an investigation and pursue claims against Bremer or its agents. Based upon the loss of funds in an amount in excess of three million dollars and without an avenue to determine whether these sums should be repaid to the Estate or whether the Estate had any other claims with respect to these agreements, on August 21, 2017, the Court appointed the Second Special Administrator (“SSA”). The SSA was directed to conduct an independent examination of the facts, circumstances and events relating to the rescission of the Estate’s agreement with UMG, and to analyze and report to the Court whether pursuing any claim(s) related to the rescission of the UMG agreement would be in the best interest of the Estate. On February 2, 2018, the Court expanded the authority of the SSA to conduct an independent examination and make recommendations regarding whether any action should be pursued for return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, or whether the Estate has a reasonable basis for a claim or claims against any person or entity in connection with the Jobu Presents agreement. After a hearing and upon receipt and consideration of the SSA’s reports filed December 15, 2017 and May 15, 2018, the Court issued

its Order & Memorandum Approving Litigation filed June 14, 2018, authorizing the SSA to pursue, on behalf of the Estate, all claims recommended in its reports.

On August 2, 2018 the SSA filed a Notice of Motion and Motion for an Order directing the former Estate Entertainment Advisors, NorthStar Enterprises Worldwide, Inc. (providing the services of L. Londell McMillan) and CAK Entertainment, Inc. (providing the services of Charles Koppelman), to refund excessive compensation received related to the Jobu Presents and UMG transactions. That motion is scheduled to be heard before the undersigned on October 2, 2018.

Counsel for CAK are now before the Court asking that the Court recuse itself for the same reasons it did so in connection with the civil litigation between Jobu Presents and CAK in Court File 10-CV-17-368. In its Order for Recusal and Reassignment of the Jobu litigation filed May 22, 2018, the Court stated, “This Court does not believe it can listen to the arguments advanced in connection with this proceeding without concern that its decisions might be perceived as clouded by the information contained within the SSA’s report.” CAK argues the same reasoning applies to the SSA’s current motion.

In recusing itself from the litigation between Jobu Presents and CAK, the Court was most concerned with the possible appearance of bias based upon its knowledge of the contents of the SSA’s reports which, at least at that point, were not part of the record in the civil matter. Those reports are part of the record in this matter. In fact, those reports were commissioned by this Court. In addition, all of the relevant parties have been under the jurisdiction of the Court throughout the entire relevant period. Such is not the case with the Jobu civil proceeding.

CAK also argues this court “has participated in multiple *ex parte* communications with the SSA concerning the substance of the SSA’S contentions in the Fee Motion, as well as the SSA’S strategies to recover compensation from CAK.” While the Court acknowledges it participated in limited meetings and conference calls where the content and recommendations stemming from the SSA’s reports were discussed, the Court’s involvement in those discussions was limited to receipt and review of the SSA’s reports. The Court took no part in discussions regarding developing strategies to recover compensation from CAK, it merely authorized the SSA to proceed with such claims if it deemed them warranted.

Finally, CAK argues prior Court statements imply an impartiality of the Court with regards to the SSA’s motion which warrant the Court’s recusal. In the Order & Memorandum Approving Litigation filed June 14, 2018, authorizing the SSA to pursue claims identified in its reports, the

Court stated, “This Court has a fiduciary duty to the Estate to attempt to preserve the assets and to pursue claims of wrongdoing against the Estate.” Similarly, in the Order Denying Recusal request filed August 31, 2018, this Court stated, “If there was a fraud upon the Court, or a violation of a fiduciary duty, it was a fraud or a violation of a duty on this Court.” Those statements merely reflect this Court’s commitment in all probate proceedings to ensure an estate is managed in a fair and equitable manner, and that its assets are preserved for the benefit of the heirs. They are not statements indicating a predisposition relating to the merits of the SSA’s pending motion.

The Minnesota Code of Judicial Conduct, Canon 2, Rule 2.11 provides:

- (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
  - (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

“Personal knowledge” as referenced in Canon 2 refers to knowledge that arises out of a judge’s private, individual connection to particular facts. *State v. Dorsey*, 701 N.W.2d 238, 247 (Minn. 2005). It does not include information a judge learns in the course of his or her general judicial capacity or as a result of their day-to-day life as a citizen. *Id.* While this Court may have received knowledge of the contents of the SSA’s report and the SSA’s intentions in advance of CAK, that knowledge does not constitute “personal knowledge” requiring recusal as contemplated by Canon 2.

As stated in prior orders, this Court has been integrally involved in this Estate matter, including appointing Bremer Trust as Special Administrator on May 2, 2016; appointing Bremer’s advisors, CAK/Koppelman and NorthStar/McMillan, on June 8, 2016; approving the UMG agreement on January 31, 2017; and approving the rescission of the UMG agreement on July 13, 2017. If the advisors are alleged to have been overcompensated for their work on behalf of the Estate, this Court is uniquely qualified to consider and rule on that motion. This Court is able and willing to give all parties a full opportunity to be heard on the merits and to rule in an unbiased manner. As a result, the CAK’s request that the Court recuse itself from consideration of the SSA’s motion is respectfully DENIED.

K.W.E.